



DEPARTMENT OF LAW
OFFICE OF THE
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STATE CAPITOL
Phoenix, Arizona 85007

R 75-295
BRUCE E. BABBITT
ATTORNEY GENERAL

76-7

January 6, 1976

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ARIZONA ATTORNEY GENERAL

Ms. Mona Smith, Director
Office of Tourism
1645 West Jefferson
Phoenix, Arizona 85007

Dear Ms. Smith:

The following is in response to your letters to this office of May 7, 1975, July 1, 1975, and July 17, 1975, as modified in accordance with your subsequent telephone conversations with this office.

The first question you ask is whether or not the Office of Tourism can receive grants. Executive Order No. 75-3, effective March 21, 1975, which created the Arizona State Office of Tourism, states in applicable part:

* * *

2. The purpose, function and responsibility of the office shall be to:

* * *

- J. On behalf of the governor and the state, accept grants, matching funds, gifts and other direct payments for the conduct of programs which are designed to promote and develop tourism.

The Governor has expressly been authorized to accept monetary grants from the federal government and its agencies, A.R.S. § 41-101.01¹, and as its senior executive

¹See A.R.S. § 35-111 et. seq. regarding the budget requirements applicable generally and A.R.S. § 35-113.01 regarding the budget treatment afforded federal grants.

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officer, the Governor has the implied authority to accept grants on behalf of the state from private sources,² absent some expression of contrary legislative intent. Cf. Opinion of the Justices, 109 N.H. 335, 251 A.2d 330, 331 (1969). Thus, the Office of Tourism is authorized to receive grants through the Governor and not directly.

The second question you pose is whether or not there are any restrictions on action taken by the Office of Tourism which also incidentally promotes private enterprise. Article IX, Section 7 of the Arizona Constitution prohibits the entry of state government into private enterprise. Governmental activity must be related to a general or public interest; governmental resources cannot be expended to promote or foster purely private interests. Town of Gila Bend v. Walled Lake Door Co., 107 Ariz. 545, 490 P.2d 551 (1971). Additionally, the Constitution prohibits the grant or donation of gifts or subsidies to private individuals or other legal entities. City of Tempe v. Pilot Properties, 22 Ariz. App. 356, 527 P.2d 515 (1974). However, a legitimate governmental expenditure which incidentally confers an ancillary benefit upon private enterprise is permissible so long as there exists a proper public purpose for the expenditure in question. Id.; Industrial Development Authority of Pinal County v. Nelson, 109 Ariz. 368, 509 P.2d 705 (1973). Thus, so long as the receipt of grants and the expenditure of sums by your office is for the purpose of securing a benefit for the public, there are no specific restrictions applicable.

Your third question concerns whether or not the Office of Tourism may solicit assistance from Arizona school children in answering inquiries from school children of other states.

The solicitation by your office of school-aged children to donate their free time to answer inquiries from school children in other states would in all likelihood be a legitimate activity for your office to undertake. However, if you intend to solicit school-aged children to answer inquiries during the school day, you must seek approval of the State Board of Education. A.R.S. § 15-102 authorizes the State Board of Education to "... prescribe and enforce a course of study for the common schools. . . ."

² See A.R.S. § 35-142.49 regarding the disposition and treatment required by law regarding private grants.

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Thus, insofar as your plan is meant to be educationally related, the State Board of Education would have to authorize its implementation. See also A.R.S. § 15-102.14, .17; Attorney General's Opinion No. 69-4-L.

Your fourth question concerns whether the Office of Tourism can permit a private organization to sponsor a photo contest on behalf of the state for which the state will incur no cost. Under Executive Order No. 75-3, the Office of Tourism is directed to:

* * *

- A. Promote and develop a campaign of information, advertising and publicity relating to the tourism business. . . .
- B. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises to participate in the promotion of tourism in Arizona. . . .

* * *

- H. Utilize any and all media of communication, publication and exhibition in dissemination of information, advertising and publication in any field of its purposes, objectives or duties.

Clearly, a photo contest which is used to promote tourism would constitute activity which has been authorized to be undertaken by your office. Additionally, insofar as your plan envisions the contest to be conducted to promote tourism in this state, there would appear to be no impediment to its initiation bearing in mind our prior comments regarding the fostering of private enterprise.

You next ask whether the Office of Tourism may enter into an agreement with a privately owned national publishing firm in accordance with which the publishing firm would be authorized to answer inquiries addressed to the state regarding tourism and new residency with a color folio such as your enclosure entitled "Arizona Facts."

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Assuming that this expenditure by the Office of Tourism is authorized under the appropriation bill, see Laws of 1975, Ch. 152, § 1, subdivision 9, there would not appear to be any impediment to the Office of Tourism causing this color folio to be printed and having it mailed to persons who address inquiries to the state. It should be noted that the requirements imposed by A.R.S. §§ 41-729 and 41-730 would be applicable, and your selection of the publishing firm would be limited in accordance therewith. As was the case with other suggestions discussed herein, the fact that a relationship exists between the Office of Tourism and private enterprise would in and of itself not be objectionable so long as the Office of Tourism does not itself engage in private business and its undertakings are for a public purpose, the Office of Tourism can properly contract with private enterprise. Town of Gila Bend v. Walled Door Co., supra; Industrial Development Authority of Pinal County v. Nelson, supra.

Sincerely,

BRUCE E. BABBITT
Attorney General

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